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MEMORANDUM FOR: Legislative Counsel

STATINTL ATTENTION:
Deputy Legislative Counsel

FROM: John F. Blake
Deputy Director for Administration

SUBJECT: Comments on New SSCI Draft of a Revised Intelligence
Charter

1. Pursuant to your request, this memorandum contains some comments relating to the new SSCI draft of legislation relating to a revised intelligence charter. In our comments we have deliberately avoided addressing minor points which, in our opinion, are unimportant at this very preliminary stage in the process. Rather, we have attempted to speak to the basic concept itself and then to address certain specific points that we consider require early clarification.

2. The concept of the establishment of the position of the Director of the National Intelligence Authority, who does not wear another hat as the head of any intelligence entity and who has strong budget authority, could provide important improvements over the present situation. Examples of such improvements would include:

a. The President could look to one individual whom he could hold responsible, in a real sense, for the activities, management and effectiveness of the community. There has been some question in the past as to whether such a person exists.

b. With the centralization of the budget control for the entire community, it should be possible to eliminate duplication, ensure that marginal activities are eliminated, and more adequately adjudicate conflicting requirements for resources.

c. Parochialism and conflict between the components of the intelligence community could be handled and resolved at a level lower than that of the National Security Council or the President in those cases where it was desirable.

d. The political and bureaucratic irritant that has often times been fostered by the dual role of the Director of Central Intelligence would be eliminated.

2. In order for these improvements to be fully realized, however, certain clarification of the proposed legislation would appear to be required. In Section 6 (a) of the proposed bill dealing with the authority and duties of the Director, it is stated that he is to direct and control the intelligence activities of the United States. The meaning of the words "direct and control" need more precise definition. The proposed law makes it clear that direction and control as exerted through the budget process clearly exists. The definitions are not so clear as relates to the command authority that the Director would be granted. Since at present CIA reports to the National Security Council and since the proposed DNIA would also report to the National Security Council, the question of command of CIA as such would seem easily solvable. On the other hand, the other components of the intelligence community which now report directly or indirectly to cabinet officers do pose command and control problems. If it is proposed that they would be either now, or in the future, made directly subordinate to the DNIA in a command sense, this should be clearly spelled out in the law. Likewise, the role of the Assistant Directors should be clarified in terms of whether or not they have command responsibility.

3. Speaking to the negative aspects of the proposed concept, of primary concern is the fact that the proposed legislation is silent as regards the funds which will be required for the new authority and the numbers of people to be assigned to it. The possibility of a bureaucratic expansion with its resultant difficulties and costs certainly exists. If it is the intent of the drafters of the legislation that the resources for the National Authority would be drawn from existing elements of the community, they should be made aware that this would interfere in many cases with the abilities of these entities to continue to properly carry out their individual statutory responsibilities.

4. Another possibly troublesome aspect of the concept is the responsibility that the proposed law places on the DNIA to report simultaneously to both the executive and legislative branches of the Government. Such a responsibility runs in the face of our traditional concept of separation of powers within the Government. While the apparent dilemma is probably not unsolvable, any legislation should be more precise in how it will be accomplished while still maintaining the separation referred to above.

5. Should the command and control questions raised above not be resolved, the centralized budget function of the DNI might pose extremely difficult, if not illegal, problems. The most dramatic example of this would be a situation created by this proposed bill where the Secretary of Defense would retain command authorities over large and costly entities but have none of the traditional powers and authorities relating to budgets for those entities. We believe this could do real violence to his role.

6. Speaking specifically to portions of the proposed bill which we feel require further definitions, we note that under Section 6 (d)(13) that the DNIA shall "be responsible for all relationships between the various entities of the National Intelligence Authority and the security services of foreign governments, including any agreements, arrangements, or understandings governing such relationships . . ." We would hope that what is meant here is a supervisory role as relates to clandestine liaison rather than a participatory one. However, this point is not clear.

7. Another section requiring further clarification is Section 6 (d)(4). In this section, the DNIA is directed to "provide for the effective and efficient direction, management, and coordination of the entities which make up the National Intelligence Authority." Here, again, as regards the word management, we would assume that only a supervisory or monitoring role is envisioned. However, this is not clear.

8. Lastly, a question arises as to whether or not a relatively simple legislation could be proposed which would establish the position of the Director of the CIA while at the same time providing for a Director of NIA, or whatever, who would take with him the whatever staff would be required and function as a coordinator of the community without allegiance to any particular part of it. Whether or not this approach would work or would be effective is conjectural.

/s/ Michael J. Maloniak

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